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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 DONALD GREEN,
12 CDCR #J-50400,

13 Plaintiff,

14 vs.

15 D. NIETO, Correctional Counselor I;
16 A. GARCIA, Correctional Counselor I (A);
17 J. TIM OCHOA, Chief Deputy Warden,

18 Defendants.
19

Civil No. 12cv0142 LAB (MDD)

**ORDER DISMISSING CIVIL
ACTION AS FRIVOLOUS
PURSUANT TO 28 U.S.C.
§ 1915A(b)(1) AND DENYING
MOTION TO PROCEED
IN FORMA PAUPERIS
AS MOOT**

(ECF No. 3)

20 Donald Green (“Plaintiff”), currently incarcerated at California State Prison, Los Angeles
21 in Lancaster, California, and proceeding pro se, has submitted a civil rights Complaint pursuant
22 to 28 U.S.C. § 1983. Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C.
23 § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* (“IFP”) pursuant to 28
24 U.S.C. § 1915(a) (ECF No. 3).

25 **I. Sua Sponte Screening Pursuant to 28 U.S.C. § 1915A(b)**

26 As amended by The Prison Litigation Reform Act, 28 U.S.C. § 1915A obligates the Court
27 to review complaints filed by anyone “incarcerated or detained in any facility who is accused of,
28 sentenced for, or adjudicated delinquent for, violations of criminal law or the terms or conditions

of parole, probation, pretrial release, or diversionary program,” “as soon as practicable after docketing” and regardless of whether the prisoner prepays filing fees or moves to proceed IFP. *See* 28 U.S.C. § 1915A(a), (c). The Court must sua sponte dismiss prisoner complaints, or any portions thereof, which are frivolous, malicious, or fail to state a claim upon which relief may be granted. 28 U.S.C. § 1915A(b); *Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010).

Plaintiff’s Complaint is subject to sua sponte dismissal pursuant to 28 U.S.C. § 1915A(b)(1) because it is duplicative of a Complaint he has already filed in another civil action. Indeed, Plaintiff’s Complaint contains identical allegations against the same defendants already brought before and considered by Judge Benitez in *Green v. Nieto, et al.*, S.D. Cal. Civil Case No. 11cv2023 BEN (BGS). A court ““may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.”” *Bias v. Moynihan*, 508 F.3d 1212, 1225 (9th Cir. 2007) (quoting *Bennett v. Medtronic, Inc.*, 285 F.3d 801, 803 n.2 (9th Cir. 2002)).

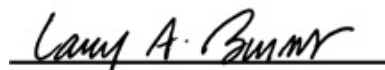
A prisoner’s complaint is considered frivolous under 28 U.S.C. § 1915A(b)(1) if it “merely repeats pending or previously litigated claims.” *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995) (construing former 28 U.S.C. § 1915(d)) (citations and internal quotations omitted). Thus, because Plaintiff has already filed the same Complaint he has filed in this action in *Green v. Nieto, et al.*, S.D. Cal. Civil Case No. 11cv2023 BEN (BGS), the Court hereby DISMISSES S.D. Cal. Civil Case No. 12cv0142 LAB (MDD) pursuant to 28 U.S.C. § 1915A(b)(1). *See Cato*, 70 F.3d at 1105 n.2; *Rhodes*, 621 F.3d at 1004.

II. Conclusion and Order

Good cause appearing, **IT IS HEREBY ORDERED** that:

Plaintiff’s Complaint in Civil Case No. 12cv0142 LAB (MDD) is **DISMISSED** as frivolous pursuant to 28 U.S.C. § 1915A(b)(1) and Plaintiff’s Motion to Proceed IFP (ECF No. 3) is **DENIED** as moot. The Clerk shall close the file.

DATED: March 7, 2012



HONORABLE LARRY ALAN BURNS
United States District Judge